IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15487 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FAKRUDDING A. TINWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15487 of 2003

MR JITENDRA M PATEL for Petitioner No. 1-7

MR SN SHELAT, ADVOCATE GENERAL, with Ms MD MEHTA, AGP, for Respondent Nos. 1 & 3

NOTICE SERVED for Respondent No. 4,5,6,7

MR NIKHILESH J SHAH for Respondent No. 2

MR MS TRIVEDI for Respondent No. 5-7

MR RAJENDRA M DESAI for Respondent No. 5,6,7

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 21/07/2004

ORAL JUDGEMENT

The petitioners were owners of land bearing City Survey No. 1448-original plot No. 394, situated in Bhuj. They have been aggrieved because upon reconstitution of their original plot No. 394, in pursuance of Bhuj Town Planning Scheme No. 5, they have been allotted Final Plot No. 240. Originally, the plot belonging to the petitioners admeasured 436.64 sq.mtrs., whereas F.P. No. 240, which has been allotted to them, admeasures 318.40 sq.mtrs. The plot of land belonging to the petitioners had to be reconstituted as substantial portion of their original plot now forms part of a road having 12 M width.

2. Learned advocate Shri J.M. Patel appearing for the petitioners has submitted that because of the reconstitution of the plot, not only the petitioners are losing some land, but they are given their final plot at a different place. It is the case of the petitioners that they ought to have been given the reconstituted plot at the place, where their original plot was situated, because the petitioners were born and brought up at the place where they were having their original plot and, therefore, they are having attachment with the said plot, and upon being shifted to a different plot, they would be away from the friends of their community. The petitioners would not like to go to a place, where people belonging to different community live.

3. It has been submitted by the learned advocate that several representations were made by the petitioners to respondent No. 2. He has referred to annexures B, C, E, H & N, which are in the nature of representations. Most of the representations were made on or after 6th February, 2003, whereas one representation was made on 3.5.2003. It has been further submitted by him that the petitioners are ready and willing to accept even a smaller plot of land admeasuring 90 sq.mt., or so in lieu of their original plot if such a small plot is given at the same place.

4. In pursuance of notice issued by this court, learned advocate Shri N.J. Shah has appeared for respondent No. 2, Shri S.N. Shelat, learned Advocate General, has appeared with Ms. Maithili Mehta, learned AGP, for respondents Nos. 1 and 3 and learned advocate Shri Y.S. Mankad has appeared for respondent No. 4. Respondents Nos. 5,6 and 7, who are residents of Bhuj and who might be affected if the petition is allowed,

have also filed their affidavit.

5. It has been mainly submitted on behalf of the respondent authorities that all the representations, which had been made by the petitioners, were made after the preliminary scheme had been sanctioned by the government under the provisions of the Gujarat Town Planning & Urban Development Act, 1976 on 27.2.2003.

6. It ha been submitted on behalf of the respondents that in the process of reconstitution of plots, boundaries of most of the plots are changed. It becomes extremely difficult for the respondent authorities to retain original plot-holders at the same place because substantial area of land was required for the purpose of laying down broad roads.

7. It has been submitted that at the time of the earthquake, which had taken place on 26.1.2001, it was found by the authorities that because of narrow lanes in the city of Bhuj, it was extremely difficult to give proper help and assistance to the affected persons because ambulances and fire brigade vehicles could not reach the affected area, which resulted into much loss to life and property. In the circumstances, as a policy it was decided by the respondent authorities to have wider roads and to give frontage on such roads to plot holders. In the said process, it had become necessary for the authorities to change boundaries of practically all the plots and many plot holders had to be shifted so as to give them frontage on a road.

8. It has been submitted on behalf of the respondents that unfortunately it was not possible to allot any Final Plot to the petitioners at the place, where they were having their original plot No. 394. It has been also submitted that boundaries of F.P. No. 240 had been once changed so as to see that the petitioners can get better shape of the plot and adjoining owner does not lose his land having superstructure thereon.

9. It has been submitted on behalf of the respondents that all representations, which were made in 2003, were made late. Moreover, the petitioners' grievance was only with regard to being shifted to a different place and for allotment of land in a particular manner and at no point of time they requested to allot even a smaller plot in lieu of their bigger plot.

10. Looking to the facts of the case, it appears that in the process of allotment of final plot to the

petitioners at a different place, the respondent authorities have not acted in an arbitrary or illegal manner and, therefore, it cannot be said that the authorities have violated any right of the petitioners. It is pertinent to note that when a town planning scheme is made, practically all plots are reconstituted and very often some persons make grievance either because of deduction of land or because they are shifted from one place to another. In public interest, at times an individual might have to be made unhappy by the authorities. The respondent authorities have acted in a legal and proper manner, and it cannot be said that the grievances ventilated by the plot-holders are justified.

11. Looking to the circumstances in which the petitioners have been allotted their Final Plot at a different place, I find no substance in the petition. However, if the petitioners feel that it is possible to get their grievances redressed by making some variation, it would be open to them to approach, with some concrete proposal, to respondent No. 2. I am sure that in such an event, respondent No. 2 shall consider their representation and the suggestions, and do the needful to render help to the petitioners if it is possible to do so, in accordance with law.

The petition is, therefore, rejected. Notice is discharged.

(A.R. Dave, J.)

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